

*Rec'd Received February 2, 1994 @ 2:40 p.m.
Dona A. Bradshaw*

ORIGINAL

RECEIVED

TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 16 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

-----)
IN RE APPLICATION OF:)

DAVID LEE COMMUNICATIONS, INC.)

Flint, Michigan)
-----)

MM DOCKET NO. 93-298

DATE OF CONFERENCE: January 26, 1994

VOLUME: 1

PLACE OF CONFERENCE: Washington, D.C.

PAGE: 1-13

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

FEB 16 1994

1

1 Before the
2 **FEDERAL COMMUNICATIONS COMMISSION** **COMMUNICATIONS COMMISSION**
3 Washington, D.C. 20554 OFFICE OF THE SECRETARY

4 -----)
5 In Re Application of:)
6 DAVID LEE COMMUNICATIONS, INC.) MM DOCKET NO. 93-298
7 Flint, Michigan)
8 -----)

9 The above-entitled matter come on for pre-hearing
10 conference pursuant to Notice before Judge Joseph Chachkin,
11 Administrative Law Judge, at 2000 L Street, N.W., Washington,
12 D.C., in Courtroom No. 4, on Wednesday, January 26, 1994, at
13 9:00 a.m.

14 APPEARANCES:

15 On behalf of David Lee Communications, Inc.:

16 ARTHUR V. BELENDIUK, Esquire
17 Smithwick & Belendiuk, P.C.
18 1990 M Street, N.W.
19 Suite 510
20 Washington, D.C. 20036

21 On behalf of Saginaw Bay Broadcasting:

22 MATT McCORMICK, Esquire
23 Reddy, Begley & Martin
24 1001 22nd Street, N.W.
25 Suite 350
Washington, D.C. 20037

On behalf of Chief, Mass Media Bureau:

JAMES SHOOK, Esquire
2025 M Street, N.W
Suite 7212
Washington, D.C. 20554

I N D E X

	Page No.
Opening Statement By Judge Chachkin	3
Statement by Mr. Belendiuk	3
Statement by Mr. Shook	5
Conference Began: 9:00 a.m.	Conference Ended: 9:20 a.m.

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

P R O C E E D I N G S

1
2 JUDGE CHACHKIN: This proceeding concerns the
3 application of David Lee Cunningham, Inc. -- David Lee
4 Communications, Inc. for the renewal of the license of station
5 WTRX which is an AM station in Flint, Michigan. May I have
6 the appearance of the parties on behalf of David Lee
7 Communications?

8 MR. BELENDIUK: Good morning, Your Honor. Arthur
9 Belendiuk of Smithwick & Belendiuk on behalf of David Lee
10 Communications, Inc. Also here is Matt McCormick on behalf of
11 Saginaw Bay Broadcasting. He's here at my request and after
12 appearances I'll explain his purpose here.

13 JUDGE CHACHKIN: On behalf of the Chief, Mass Media
14 Bureau?

15 MR. SHOOK: James Shook.

16 JUDGE CHACHKIN: All right, Mr. Belendiuk, where do
17 we stand in this proceeding?

18 MR. BELENDIUK: Your Honor, if I may by way of a
19 report, my client, David Lee Communications, Inc., has been
20 making every effort to get back on the air in an expeditious
21 manner. He -- a preliminary agreement for an LMA has been
22 entered into with Saginaw Bay Broadcasting, who Mr. McCormick
23 represents. The draft of the agreement was presented to
24 Bureau counsel for his review. I -- Bureau counsel, I
25 understand, has been tied up in a, in a hearing. I spoke with

1 him this morning. He said he had some minor changes on that
2 agreement. We're going to meet over lunch today and iron out
3 those changes. With that, we're going to have an LMA executed
4 say by the end of the week. Currently the station is being --
5 in the process of being placed on the air. Engineers have
6 been working on the station for approximately -- I guess it's
7 about -- been about a week-and-a-half now. There were some
8 problems with the pattern. Before you can go on you have to
9 do a partial proof. The first time they started there were
10 problems with the patterns. An engineering consultant has
11 come in. I was advised that the pattern has now been
12 rectified and that a partial proof is being completed even as
13 we speak now. It takes about two to four days to do. They're
14 hoping to get it done by Friday or Monday. I should see it on
15 my desk Monday, Tuesday at the latest. A 302 is required with
16 the partial proof. I've spoken with the AM Branch and they
17 advised me it takes about one to two weeks before they'll give
18 permission to get on the air. I've also spoken with the AM
19 Branch and they said that they may allow him to get on --
20 operate pursuant to a variance before the partial proof is
21 worked out, and I'm due to go talk with them today. He'd like
22 to get on because it's going to be a sports program. He'd
23 like to get on before Sunday to cover the Super Bowl. He is
24 now -- as I understand it and I spoke with his engineering
25 consultant, he is now technically ready to go on the air.

1 It's just getting the approvals now at this point to, to be
2 ready to get back on the air.

3 JUDGE CHACHKIN: What's the Bureau's position, Mr.
4 Shook?

5 MR. SHOOK: Well, Your Honor, we'd like to see this
6 station back on the air as soon as possible. The other
7 concern that we have is to receive as much assurance as is
8 reasonably possible that the station will stay on the air.

9 JUDGE CHACHKIN: You said you had a chance to review
10 this LMA agreement?

11 MR. SHOOK: I did, Your Honor, and there are some
12 things that we are going -- we, meaning I and the other
13 counsel, are going to talk about at lunch. As a general
14 matter, the Time Brokerage Agreement that we had seen appears
15 to be acceptable. As a -- as Mr. Belendiuk explained, there
16 are some minor changes or minor additions that we think have
17 to be incorporated into the agreement, but once that is
18 accomplished the agreement should be acceptable in accordance
19 with the Commission's rules and the agreement appears to be
20 the vehicle that will get the station back on the air and, it
21 appears right now, has every prospect of keeping the station
22 on the air, but time will tell.

23 JUDGE CHACHKIN: What is this LMA agreement that --
24 what will the station -- you say David Lee Communications,
25 Inc. will continue to operate and want to get on the air and

1 you're hopeful you'll be able to get on the air by Sunday to
2 air the Super Bowl. Can you get on the air by yourself or
3 you're talking about this LMA agreement?

4 MR. BELENDIUK: He can get on the air by himself,
5 but he would prefer to operate pursuant to the LMA agreement,
6 but he is, he is committed to getting himself on the air with
7 or without the LMA agreement.

8 JUDGE CHACHKIN: I thought there was a problem about
9 funds, that the necessary funds in order to be able to get on
10 the air. Has that been resolved or -- does he have sufficient
11 financing?

12 MR. BELENDIUK: It appears so because he's gotten,
13 he's gotten the engineers in place and has gotten what he
14 needs to, to make the changes to get on the air. I think the
15 LMA agreement will help him stay on the air.

16 JUDGE CHACHKIN: Well, what -- Mr. Shook, what about
17 the issues in this case? Are they moot now or what's the
18 position of the Bureau on that?

19 MR. SHOOK: Well, Your Honor, in the case of the
20 issue involving the unauthorized silence, we don't think that
21 that issue is moot. We have submitted requests for admissions
22 of fact which we believe would, depending on how they're
23 answered and if we think -- if they're answered the way we
24 think they will be answered, that that would establish that
25 the station, in fact, was off the air in an unauthorized

1 manner, so that would, that would go to the one issue. In
2 terms of whether the station is going to come back on the air
3 and remain on the air, that's, that's what we're more or less
4 working through right now.

5 JUDGE CHACHKIN: Well, there's two issues, to
6 determine whether David Lee Communications has the capability
7 and intent to expeditiously resume broadcast operations and it
8 appears based on what I heard today that --

9 MR. SHOOK: It does sound as if that's going to
10 happen, that they're going to get back on the air and if this
11 agreement certainly -- I -- the way I understand it is the
12 agreement is the vehicle to keep him on the air. It may well
13 be that there is some Plan B, that if this Time Brokerage
14 Agreement for whatever reason doesn't work, that David Lee
15 Communications has a fall back plan to get on the air. But I
16 have really no knowledge of that and that would be, that would
17 be the kind of thing that the Bureau would probably endeavor
18 to discover through document requests.

19 JUDGE CHACHKIN: Well, now with respect to Issue B
20 to determine whether the applicant has violated Section
21 73.1740 which deals with staying on the air without permission
22 -- staying off the air without permission, what -- how would
23 the Bureau -- what is the Bureau's view about the disposition
24 of that issue? I mean --

25 MR. SHOOK: If that, if that were the only problem

1 in terms of -- you know, this is -- Issue A, let's say, is
2 resolved in the licensee's favor and the second issue is
3 resolved against the licensee. The Bureau's view right now
4 would be that in all likelihood a conditional renewal would be
5 the appropriate way of dealing with the matter.

6 JUDGE CHACHKIN: With no forfeiture?

7 MR. SHOOK: Well, under the circumstances a
8 forfeiture might be inappropriate because what we'd like to
9 have happen, of course, if the licensee to get back on the air
10 and stay on the air and if one of the principal reasons the
11 licensee went off the air in the first place was that it had
12 money difficulties, then imposing a forfeiture is
13 counterproductive.

14 JUDGE CHACHKIN: Is that the reason why the station
15 went off the air, because of money difficulties?

16 MR. BELENDIUK: Your Honor, I, I don't know. This
17 is a new client for me. I can tell you that what I've been
18 focusing on is what it's taken to get him back on the air.

19 JUDGE CHACHKIN: So what is the Bureau's suggestion
20 of how we should proceed with this case?

21 MR. SHOOK: The Bureau's view right now is that we
22 should continue with the dates that have been set and that
23 this would act as a spur to get the licensee back on the air
24 and to have in place an arrangement which we could reasonably
25 see would keep the licensee on the air.

1 JUDGE CHACHKIN: So the current hearing date is
2 March 15th and what you're saying is that we should maintain
3 the present hearing date?

4 MR. SHOOK: That would be the Bureau's position.

5 JUDGE CHACHKIN: And then establish dates for
6 exchange of exhibits and things of that nature --

7 MR. SHOOK: Correct.

8 JUDGE CHACHKIN: -- on the March 15th date?

9 MR. SHOOK: Correct.

10 JUDGE CHACHKIN: As far as discovery is concerned, I
11 assume the Bureau is not going to conduct any discovery except
12 its admissions that you've asked for?

13 MR. SHOOK: Well, the admissions that we already
14 have and then, as I said, a request for documents which
15 probably won't be very extensive.

16 JUDGE CHACHKIN: Mr. Belendiuk, do you have any
17 problem with what the Bureau suggests, namely that we maintain
18 the present hearing date of March 15th at least temporarily,
19 see where things are going?

20 MR. BELENDIUK: I don't, I don't have a problem. I
21 want to work with the Bureau on -- in every respect. I would
22 say this. As I told you, it may be two weeks before he gets
23 on and the Bureau would want some assurance that he's going to
24 stay on. I would, I would postpone the hearing date if it
25 were up to me for a little while longer to give me more time

1 to work out an amicable agreement with the Bureau, but if the
2 Bureau says they want March 15th, I'll live with that.

3 JUDGE CHACHKIN: Is that the Bureau's position?

4 MR. SHOOK: That's the Bureau's position, Your
5 Honor.

6 JUDGE CHACHKIN: All right. What date does the
7 Bureau want for -- then exchange of exhibits would be March
8 1st?

9 MR. SHOOK: That would, that would be fine. I mean,
10 we could have a relatively short time frame between the
11 exchange of exhibits and the start of the hearing.

12 JUDGE CHACHKIN: Well, what do you suggest? The
13 week before or ten days before or what?

14 MR. SHOOK: No. I mean March 1st is certainly fine.

15 JUDGE CHACHKIN: March 1st for exchange of exhibits?
16 All right. Of course, these dates, if it's something that --
17 if it's worked out and the Bureau is satisfied, obviously
18 these dates will be changed.

19 MR. SHOOK: Well, and the other --

20 JUDGE CHACHKIN: We'll just keep these dates
21 presently.

22 MR. SHOOK: Right, and the other --

23 JUDGE CHACHKIN: And March 8th for notification of
24 witnesses. As far as discovery, I'll leave that up to the
25 parties to work that out. For that, any date.

1 MR. SHOOK: We anticipated that there was a
2 possibility that the licensee would seek to resolve this
3 matter by a Summary Decision, so that's another reason for
4 just holding things as they are and if the licensee does have
5 a viable plan in place, chances are we're going to see it
6 through a Motion for Summary Decision.

7 MR. BELENDIUK: Your Honor, if I remember the rules
8 correctly, and I don't have a copy, but I need to file a
9 Summary Decision 30 days before the hearing date.

10 MR. SHOOK: I believe it's 20 days.

11 MR. BELENDIUK: 20 days. That makes it really tight
12 and that was why I was saying if the Bureau would give us --

13 JUDGE CHACHKIN: Well, that -- you'll still be able
14 to file it by almost the end of February. I'll give you until
15 March 1st to file a Motion for Summary Decision.

16 MR. BELENDIUK: Thank you, Your Honor.

17 JUDGE CHACHKIN: Do you have any objection to that
18 then?

19 MR. SHOOK: No objection, Your Honor.

20 JUDGE CHACHKIN: All right. So March 1st is the
21 date for exchange of exhibits and I assume if a Motion for
22 Summary Decision are filed that day, it won't be any need to
23 file -- exchange exhibits. Is that correct, Mr. Shook? Would
24 you -- or you want exhibits exchanged on that date or perhaps
25 you want the Summary Decision filed earlier? What is it?

1 MR. SHOOK: No. Under the circumstances, if, if a
2 Motion for Summary Decision is going to be filed, I would
3 think it more prudent to delay the dates that would otherwise
4 be, you know, governing the hearing situation until the Motion
5 for Summary Decision was resolved. I mean, there'd be no
6 reason to go through the other steps if the matter were, in
7 fact, going to be resolved by Summary Decision.

8 JUDGE CHACHKIN: All right. So if you file a Motion
9 for Summary Decision by March 1st, then you need not exchange
10 your exhibits on that day and procedural dates will be held in
11 abeyance until I rule on the, the Motion for Summary Decision.
12 If I deny it, then I'll have to set new procedural dates. Is
13 that understood, Mr. Belendiuk?

14 MR. BELENDIUK: Yes, Your Honor. I'm making notes
15 on that.

16 JUDGE CHACHKIN: All right. So the dates that we
17 have established is March 1st for exchange of exhibits, March
18 8th for notification of witnesses, and the hearing date
19 remains at March 15th with the understanding that all of these
20 dates will be held in abeyance and new dates will be
21 established if a Motion for Summary Decision is filed by March
22 1st. We're now recessed. Anything further the parties want
23 -- have to add at this time?

24 MR. BELENDIUK: No, Your Honor.

25 JUDGE CHACHKIN: All right. We're now recessed.

1 Thank you.

2 (Whereupon, the conference was adjourned at 9:20
3 a.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN RE APPLICATION OF DAVID LEE COMMUNICATIONS, INC.

Name

MM DOCKET NO. 93-298

Docket No.

WASHINGTON, D.C.

Place

JANUARY 26, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 13, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

February 1, 1994

Date

Cheryl L. Phipps
Cheryl L. Phipps, Transcriber
Free State Reporting, Inc.

February 2, 1994

Date

Diane S. Windell
Diane S. Windell, Proofreader
Free State Reporting, Inc.

February 2, 1994

Date

Alice Wehner
Alice Wehner, Reporter
Free State Reporting, Inc.

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area 261-1902
Balt. & Annap. 974-0947